**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN**

**TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929**

**OP.No. 29445 of 2001(E)**
**----------**

**PETITIONER:**
**----------**

**CICILIAMMA MATHEW, UPSA,**
**HIDAYATHIL ISLAM MADRAS U.P.SCHOOL,**
**KALPETTA, WAYANAD.**

**BY ADV. SRI.J.JULIAN XAVIER**
**SRI.P.PAULOCHAN ANTONY**

**RESPONDENTS:**
**----------**

1. **STATE OF KERALA, REP.BY ITS SECRETARY,**
   **GENERAL EDUCATION DEPARTMENT,**
   **GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.**

2. **DIRECTOR OF PUBLIC INSTRUCTION,**
   **THIRUVANANTHAPURAM.**

3. **ACOUNTANT GENERAL OF KERALA,**
   **THIRUVANANTHAPURAM.**

4. **ASSISTANT EDUCATIONAL OFFICER,**
   **VYTHIRI.**

**BY GOVERNMENT PLEADER SMT.T.B.RAMANI**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**ORDER ON CMP. NO.47945/2001 IN OP. NO.29445/2001**

**DISMISSED**

**17.07.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1:- COPY OF THE CERTIFICATE CERTIFYING THAT PETITIONER WAS GRANTED SENIOR GRADE WITH EFFECT FROM 1.9.92.**

**EXT.P2:- COPY OF THE CIRCULAR DT. 6.3.98 ISSUED BY THE 1ST RESPONDENT.**

**EXT.P3:- COPY OF THE REPRESENTATION DT. 15.5.99 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**

**EXT.P4:- COPY OF THE JUDGMENT DT. 2.6.99 IN OP. NO.13243/99.**

**EXT.P5:- COPY OF THE ABOVE G.O.BEARING NO.G.O.(P) 3116/98/FIN TRIVANDRUM DT. 15.12.98**

**EXT.P6:- COPY OF THE ORDER SERVED ON THE HEADMASTER, HIMUPS, KALPETTA BY THE 4TH RESPONDENT.**

**EXT.P7:- COPY OF THE ORDER NO.G.O.(RT) 2554/2000 DT. 24.6.2000.**

**/TRUE COPY/**

**P.S. TO JUDGE**

**tss**

**THOTTATHIL B. RADHAKRISHNAN, J.**

= = = = = = = = = = = = = = = = = = = = = = = = =

**O.P.No. 29445 of 2001-E**

= = = = = = = = = = = = = = = = = = = = = = = = =

Dated this the 17th day of July, 2007.

**JUDGMENT**

The petitioner is a teacher in an aided school. The question whether her prior service in a Government school on a temporary basis was entitled to be counted for the purpose of increment and other benefits in terms of the Government Decision No.2 under Rule 33 in Part I of the Kerala Service Rules is doubtful in view of the decision of the Division Bench of this Court in **George Varghese v. State of Kerala** [2006 (3) KLT 852]. But the Government taking note of the fact that Government Decision No.2 under Rule 33 in Part I KSR was deleted with effect from 1-10-1994, issued Ext.P5 Government Order on 15-12-1998 stating that past cases already settled on the basis of the

Government Orders referred to in Ext.P5 will not be re-opened. According to the petitioner, Ext.P7 is a case applying Ext.P5 Government Order in a similar circumstance.

2. In the light of what is stated above, the benefit of the previous service of the petitioner would be counted for earning such benefits as may be available in terms of Government Decision No.2 which then stood under Rule 33 of Part I KSR and for benefits accruing on account of G.O. (P)No.543/89/Fin. and GO(P)No.540/94/Fin. referred to in Ext.P5. That cannot count for any other purposes. Accordingly, the Government are directed to re-consider the case of the petitioner in relation to the recovery of the over-drawn higher grade pay. Let a final decision as stated above be taken within three months from the date of receipt of a copy of this judgment.

The writ petition is disposed of with the aforesaid directions.

**THOTTATHIL B. RADHAKRISHNAN,**
**JUDGE.**

Sha/-

**THOTTATHIL B. RADHAKRISHNAN, J.**

= = = = = = = = = = = = = = = = = = =

**O.P.No.29445 of 2001-E**

= = = = = = = = = = = = = = = = = = =

**JUDGMENT**

**Dated: 17th July, 2007.**